COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
{chapter VIII, Rule 32 (2) (b)}
Description of the Case.

Criminal Appeal No. 339 of 2001
(Old No. 1688 of 1986)

Chanar Singh and four others

....Appellants

Versus

State

...Opposite Party

Sri H.V. Shah , Advocate for appellant
Sri Nandan Arya, learned Addl. G.A. for the State

Approved for reporting.
~~Not approved for reporting~~.

Date: April 25, 2007

(Dharam Veer, J.)

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL APPEAL No. 339 of 2001
(Old No. 1688 of 1986)

1. Chanar Singh, son of Nain Singh
   Resident of Saila Kot Patwari Chhetra,
   Sailakot, P.S. Kot Meharbind, Almora.
2. Bhawan Singh S/o Trilok Singh
3. Gopal Singh S/o Har Singh
4. Gopal Singh Dungariyal S/o Umed Singh
   All R/o Saila Kot Patwari Chhetar, Sailokot,
   P.S. Kot Meharbind, Almora
5. Bhim Singh S/o Tika Singh, R/o Dharigarh,
   P.S. Patwari Chhetra, P.S. Farraqwal,
   Dungra, Almora

...Appellants

Versus

State ....Opposite Party

Dated: April 25, 2007

Sri Harsh V. Shah, learned counsel for the appellant
Sri Nandan Arya, learned AGA for the State

HON. DHARAM VEER, J.

1. This criminal appeal, under Section 374(2) of the code of Criminal procedure, 1973 (hereinafter referred as **Cr.P.C.**), has been preferred by the appellants against the judgment and order dated 31.05.1986 passed by Sessions Judge, Almora in Sessions trial No.03 of 1986, State Versus Chanar Singh & others, whereby the learned Session Judge convicted the Chanar Singh, Bhwan Singh and Gopal Singh S/o Har Singh, appellant Nos. 1 to 3 respectively and awarded a sentence for 6 months R.I. to each of them for the offence under Section 323 I.P.C. and accused Gopal Singh S/o Umed Singh and Bhim Singh, appellants Nos.4 and 5 respectively were convicted under Section 323 read with Section 149 of I.P.C. and they were awarded sentence for 6 months R.I. to each of them. All the appellants/accused persons were further convicted for an offence punishable under Section 147 I.P.C. and were awarded

6 months R.I. each and accordingly all the sentences were also directed to run concurrently.

2. In brief the prosecution story is that complainant Dharmanand as well as injured Debi Datt, Krishnanand and Ganesh Datt belong to one family and they have a cloth shop known as Debi Datt Krishnanand in village Doram. It is alleged that the accused persons were inimical to the complainant and other members of his family as accused Chanar singh and Nain Singh, who is the brother of accused Bhim Singh, had falsely implicated the brothers of the complainant in a murder case. It is stated that at about 5 P.M. on 11.06.85 at village Doram, Patti Patwari Kot Meherbind, all the accused persons reached the shop of the complainant armed with Lathis and stones. They started pelting stones and when they were asked not to do so, they entered the shop and started beating Krishnanand, Ganesh Dutt and Debi Datt causing a number of injuries to them. The accused persons also looted an amount of Rs. 3,000/- from the shop. It is alleged that witness Nityanand, Chandra Singh and Parmanand were the witness of the occurrence. Thereafter, Dharmanand, P.W.1, lodged the written report, Ex.Ka-1, with the Patwari concerned at 8 P.M. on the same day. The Patwari, Madan Singh Birodia, PW 5, Prepared the Chik Report Ex.Ka-6 in accordance with the written report, Ex.Ka –1 and the case was accordingly registered. The statement of witness Dharamanand was also recorded by the Patwari. The Patwari reached the place of occurrence in the morning o f 12.6.85 and sent the injured persons to Almora Hospital and prepared the site plan i.e. Ex. Ka.7 on 12.06.1985. He took in his possession letter Ex.Ka.5 and invoice Ex.3.

He has also interrogated the accused persons and after that all the accused persons surrendered in court on 17.6.1985. After completing the investigation, the Patwari concerned submitted the charge sheet Ex-Ka.8 on 6.8.1985.

3. The Patwari concerned has submitted the charge sheet in the court of C.J.M., Almora and C.J.M., Almora has committed the case to the court of Sessions, Almora vide his order darted 13.1.1986 after complying with the provisions under Section 207 Cr.P.C.

4. Against the accused persons, the charges under Section 395 read with Section 397 I.P.C. and Sections 147, 323 read with Section 149 I.P.C. were framed and against accused Bhawan Singh, Chanar Singh and Gopal Singh S/o Har Singh, charge under Section 323 I.P.C. was framed.

5. The prosecution has examined as many as five witnesses in support of its case. Dharmanand is the P.W. 1, who has lodged the FIR and has proved the FIR Ex.Ka.1 He is stated to be an eyewitness for the occurrence. Parmanand is P.W.2 who also has been examined as eyewitness of the occurrence. Dr. G.P. Painyuli, P.W.3 has been examined who proved the injury reports. Ganesh Dutt is the P.W.4 who is said to be one of the injured persons. Madan Singh Birodia, Patwari is the P.W. 5 who had conducted the investigation in the case.

6. Dr. G.P. Painuli, P.W.3 has medically examined Ganesh Dutt at 10.45 A.M. on 12.06.1985 and he found the following Injuries on his body:-

1. *Abraided contusion size 4 cm. X 2 cm. on left side forehead, 1.5 cm. above left eye brow. Colour reddish.*
2. *Abraided contusion 5.5 cm. X 3.5 cm. Over back of right upper arm. Reddish.*
3. *Abraided contusion 4 cm. X 2 cm. Over back of right fore arm (middle part) Reddish.*
4. *Contusion 3cm. x 1.5 cm. over back of left fore arm (middle part) reddish.*
5. *Multiple abrasion in an area of 5 cm. x 4 cm. over front of left knee cap. Smallest measuring 0.5 cm. x 0.5 cm., biggest measuring 1.5 cm. x 1 cm. Thin crust present, which can be removed with wet cotton.*

The doctor P.W.3 also examined Krishnanand at 11:05 A.M. on the same day and he found the following injuries on his body:-

1. *Lacerated would 2.5 cm. x 1 cm., muscle deep over right of scalp, 6 cm above upper margin of right ear. Serious discharge present.*
2. *Lacerated would 2 cm. x 1 cm., muscle deep over right mastoid bone.*
3. *Abraided contusion 3 cm. x 4 cm. over back of right lower forearm, 1.5 cm above wrist joint. Kept under observation. Advised X-ray of right wrist region.*
4. *Contusion 5 cm. x 3.5 cm. over front of right thigh, middle part. Colour reddish.*
5. *Abrasion 1 cm. x 0.5 cm. over left side of scalp; 8 cm. above upper margin of left Pinna.*

Dr. G.P. Painuli- P.W.3 also examined Debi Dutt at 11.20 A.M. on the same day and he found the following injuries on his body:-

1. *Abraded contusion size 5 cm. x 5 cm. over left hand (back). Colour reddish.*
2. *Abrasion 2.5 cm. x 2 cm, over back of right forearm, 2 cm. above wrist joint.*
3. *Contusion 4 cm. x 1.5 cm. over outer aspect of left forearm, 1 cm. from elbow joint.*
4. *Contusion 3 cm. x 1.5 cm. over front of left arm, 1.5 cm above left elbow joint.*
5. *Abrasion 1.5 cm, x 1 cm. over upper part of left leg.*

7. Dr. G.P. Painuli P.W.3 has proved the medical reports, Exs.Ka-2, Ka-3 and Ka-4 respectively which he had prepared at the time of medical examination. Dr. Painuli also stated that except for injury No.3 of Krishanand, all the injuries of the injured were simple and were caused by some blunt weapon or by friction. He further stated that X-ray was advised in respect of injury No.3 of Krishnanand. It was also stated that all the injuries were about one day old at the time of medical examination. It was also stated that the injuries could have been caused at about 5:00 P.M. on 11.6.1985 by Lathi or Danda.

8. Thereafter, the statements of the accused persons were recorded under Section 313 Cr.P.C. The accused persons in support of their case pleaded not guilty to the offences charged and they asserted that they have been falsely implicated due to the fact that accused Chanar Singh and others has deposed in the murder of Dhan Singh. It was also asserted that Dhan Singh was the son of maternal uncle of accused Gopal Singh. Accused Bhim Singh stated that he was working as labourer in the resin depot at Chalnichhina and on the day of occurrence, he was at the depot. The accused in support of his plea examined Hira Ballaba Pandey, resin Moharrir of Chalnichhina depot, D.W.1. This witness has proved the document Ex.Kha-1, which is a carbon copy of report with regard to the attendance of accused Bhim Singh at the depot for the month of June, 1985.

9. The learned Sessions Judge after appreciating the evidenced on record vide his order dated 31.5.1986 convicted the Chanar Singh, Bhawan Singh and Gopal Singh S/o Har Singh, appellant

Nos. 1 to 3 respectively and awarded a sentence for 6 months R.I. to each of them of the offence under Section 323 I.P.C. and Gopal Singh S/o Umed Singh and Bhim Singh, appellants Nos. 4 and 5 respectively, were convicted under section 323 read with Section 149 of I.P.C. and they were awarded sentence for 6 months R.I. each. All the appellants/accused persons were further convicted for an offence under section 147 I.P.C. and were awarded 6 months R.I. each. Against the said order dated 31.5.1986, the accused/appellants have come up in appeal before this Court.

10. I have heard Sri Harshvardhan Sah, learned counsel for the appellants and Sri Nandan Arya, learned AGA for the state and perused the entire record available with me.

11. The learned Sessions Judge has convicted Chanar Singh, Bhawan Singh and Gopal Singh S/o Har Singh, appellant Nos. 1 to 3 respectively for an offence under section 323 I.P.C. and accused Gopal Singh S/o Umed Singh and Bhim Singh, appellants Nos.4 and 5 respectively were convicted under section 323 read with Section 149 of I.P.C. All the appellants/accused persons were further convicted for an offence punishable under section 147 I.P.C. and they have been acquitted under Sections 395, 397 I.P.C. Now, this Court has to examine as to whether the prosecution evidence is sufficient to establish beyond reasonable doubt that the accused persons had come to the shop of the complainant Krishnanand Debi Datt at about 5 P.M. on 11.6.1985 and had caused injuries to Ganesh Datt, Krishananand and

Debit Datt in prosecution of the common object of the unlawful assembly.

12. In the present case, Dharamanand P.W. 1, Paramanand, P.W. 2 and Ganesh Datt, P.W. 4 are the eyewitness of the incident. Ganesh Datt is the injured eyewitness and Dharmanand P.W. 1 is the son of injured Debi Dutt. All the three injured persons are brothers.

13. Dharmanand P.W. 1 has stated that in village Doram, he has a shop with the name Debi Datt and Krishna Nand and in this shop, his uncle Ganesh Dutt was working at that time. On 11.6.1985 at 5.00 P.M., he was sitting on a bench at the shop and Ganesh Dutt was sitting inside the shop at the counter (Gaddi) and this counter (Gaddi) is at the cloth shop. He has also stated that adjoining to this cloth shop, a general merchandise shop is also there in which his uncle Krishna Nand was doing the business and he was there at the time of occurrence. On the first floor of this shop, there is a post office where his father Debi Dutt was working as Branch Postmaster. He has also stated that accused Chanar Singh, Bhawan Singh, Gopal Singh S/o Har Singh and Gopal Singh S/o Umed Singh and Bhim singh arrived there. It is also stated that there were known to him prior to this incident. These accused persons have Lathis and stones in their hands and they started pelting stones on the shop. Meanwhile, Debi Dutt came down from the psot office to his shop and Ganesh Dutt, Debi Dutt and Krishnanad asked the accused persons as to why there were doing so, then accused persons entered into the shop and accused Chanar Singh has caused injury on the Ganesh Dutt with Lathi; Bhawan

Singh attacked on Krishnanand by Lathi; Gopal Singh S/o Har Singh attacked on Devi Dutt by Lathi; Gopal Singh S/o Umed Singh was also armed with Lathi and he was crying *Maro Maro*. In the meantime, Bhim Singh has looted Rs. 3,000/- from the cashbox which was lying there near Ganesh Dutt. By receiving the injuries, Devi Dutt, Krishnand Nand and Ganesh Dutt fell down on the earth. Parmanand P.W. 2 was also present there and he has seen the occurrence. The accused ran away with Lathis. He has also stated that on the date of the occurrence, there was a fracture in his foot and for that reason he was moving very slowly and after the incidence, he along with Shasti Dutt has gone to the Patwari to lodge the first information report and he has proved the report exhibit Ka- 1. He has also stated that the distance of Patwari Headquarter from the place of occurrence is about 3 Kms. He has also stated that on the date of occurrence, there was a marriage of son of Jay Dutt and all the people of the village have gone to attend the marriage. The shops of the complainant and Jevananand were only opened on that day and Jewananad had gone to the marriage party and his son Shasti Dutt was in the shop.

14. P.W.2 Parmanand is also an eyewitness of the incident. He has also stated that he knows the accused persons and also the injured/complainant. He has stated that on 11.06.1985, he has come to Doram from his village. At 5:00 p.m. on 11.6.1985, he was in the shop of Jeewanand then he heard the noise from the shop of Krishnand and had gone to the said shop. The accused first pelted stones on the said shop and when Ganesh Dutt and Dharmanand asked why they were doing so, the accused persons entered in the shop and they were armed with Lathis. Chanar Singh

caused injury by Lathi to Ganesh Dutt and Bhawan Singh caused injury by Lathi to Krishnanand Chand and Gopal Singh S/o Har singh caused injury by Lathi to Devi Dutt. He has also stated that he told them not to do so. When the blood was oozing out from Krishnand's body, he held him and then his clothes were also blood stained with the blood of Krishnanand. Thereafter, when he shown his blood stained clothes to Patwari, the Patwari told him to keep these clothes with him. He has produced the blood stained shirt and *Pajama*, which was exhibited in the court as Ext.1 and 2.

15. P.W.4 Ganesh Dutt is an injured witness who has stated that in village Doram, he has a shop with the name Debi dutt Krishnand and in that shop, he was doing the business of selling the clothes. On the date of occurrence, Jay Dutt's son marriage was there and people have gone in the said marriage and only his shop and shop of Jewanananand was open and Jewanand had gone to the marriage and his son Shasti Dutt was on the shop. He has stated that on 11.6.1985 at 5.00 P.M., he was sitting at his counter (Gaddi) and Krishnand was sitting on the counter of Parchun shop. Dharmanand was sitting at the bench of the shop and Devidutt was in the post office at second floor and Devidutt works there as Branch Postmaster. Accused Chanar Singh, Bhawan Singh, Gopal Singh S/o Har Singh, Gopal Singh S/o Umed Singh and Bhim Singh came in the shop and firstly they started pelting stones in the shop and when he asked why they were doing so, then all the five accused armed with Lathis entered Into the shop. It was stated that Chanar Singh caused injury to him (Ganesh Dutt) with Lathi; Bhawan Singh caused injury

to Krishnand by Lathi; Gopal Singh S/o Har Singh caused injury to Debi Dutt; Gopal Singh S/o Umed Singh was armed with Lathi and he was crying *Maro Maro.* He (Ganesh Dutt), Debi Dutt and Krishnand received injuries by Lathi and blood was also coming out. He has also stated that Rs.3,000/- was looted by Bhim Singh from the cashbox. He has also stated that P.W.2 Parmanand was also there and he told the accused persons not to do so. He has also stated that the blood, which came out from the head of Krishnand was also stained in the clothes of Parmanand. He has also stated that after this incident, Nityanand, Chandra Singh and Shasti Dutt came and thereafter Dharmand and Shasti Datt went to lodge the report to the Patwari. He has also narrated that on 12.6.1985, all the three injured persons went to Almora Hospital by bus where they were medically examined. He has also stated that against his nephew Chandra Singh accused has given his false evidence and for this reason, accused persons were inimical to them. He has also stated that on the date and occurrence, one of his nephews has gone to the marriage party, four other nephews have gone to garden and one other nephew went to Haldwani. He has also stated that the distance of Chalnichhina and Doram is 4-5 Kms. By motor route and about 3 Kms. By walking.

16. P.W.3 Dr. G.P. Painuli who has proved the injury reports, Ex.Ka-2, Ka-3 and Ka-4 respectively has also supported the evidence of P.W.1 Dharmanand, P.W.2 Parmanand and P.W.4 Ganesh Dutt. From the medical evidence, it is also proved that the injured persons have got the injuries on 11.06.1985 at 5:00 P.M. and these injures were simple and were caused by some blunt weapon or by friction. Thus, the

factual evidence and oral statement given by P.W.1 Dharmanand, P.W.2 Parmanand and P.W. 4 Ganesh Dutt is corroborated by medical evidence.

17. P.W.5 Madan Singh Birodia, Patwari was also examined who has conducted the investigation and has proved the charge sheet and site plan. He has stated that in 1985, he was posted at Patwari area Kot Meher Bind and Village Doram also come in his circle. On 11.06.1985 at 8:00 P.M., Dharmanand has produced him a report Ex.Ka –1 at his headquarter and on the basis of said report, he has prepared the Chik Report i.e. Ex.Ka-6 After that he started the investigation in the matter, In the investigation, he has taken the statement of the witnesses and inspected the place of occurrence. He has also forwarded the injured to the Almora Hospital. He has also taken a letter Ex.Ka.5 and Bijak. Ex.-3. He has also prepared a site plan on the spot i.e. Ex.Ka.7. After completing the investigation, he has submitted the charge sheet i.e. Ex.Ka.8.

18. The defence counsel has cross examined the witnesses at length but nothing has come out from the cross-examination to discredit the credibility of these witnesses.

19. The presence of P.W. 1 Dharmand on the spot is natural and from the statement given by him and the circumstances, I find that the evidence of this witness is trustworthy, believable and natural.

20. P.W. 2 Parmanand is an independent witness and his presence on the spot is also very natural. He was also cross-examined by the defence at length but no material has come out to prove that this

witness was not present at the spot. The evidence of this witness is also trustworthy, believable and hence his presence on the spot is natural.

21. P.W. 4 Ganesh Dutt is the injured witness and he has got the injures on his body. Hence, his statement is also trustworthy, believable and reliable.

22. Thus, the statement of all the three eyewitnesses are the statements corroborated to each other and the incidence at the spot is proved beyond reasonable doubt on the basis of their statements. Hence, I do not find any ground not to believe the evidence of these witnesses. Hence, from the above stated evidence of the prosecution, P.W. 1 Dharmanand, P.W. 2 Parmanand, P.W.3 Dr. G.P. Painuli, P.W. 4, Ganesh Dutt and P.W. 5 Madan Singh Birodia, it is well proved and well established that the prosecution has proved the case beyond reasonable doubt.

23. Learned counsel for the appellants argued that there was delay in lodging the F.I.R. in this case. The distance of Patwari headquarter from the place of occurrence was about 3 Kms. As appears from the Chik Report Ex.Ka.6. Dharmanand, P.W.1 has stated that his foot was fractured, hence, he could walk very slowly. He had gone to lodge the FIR with the patwari and obviously he must have walked very slowly as his foot was fractured and route was also hilly, In the facts and circumstances of the case, it cannot be said that there was any delay in lodging the F.I.R.

24. Learend counsel for the appellants further argued that injured persons could have got themselves

examined at some nearby hospital instead of proceeding for Almora. As the Patwari has stated the injured in his statement to go Almora for medical examination, in this manner that the injured preferred to go to Almora for their treatment does not in any way show that their injuries were got prepared subsequently. Furthermore, the medical evidence clearly indicates that the injuries could have been caused at the time of occurrence.

25. Learned counsel for the appellants also argued that witnesses Dharmanand and Ganesh Datt are Interested witnesses and Parmanand P.W. 2 was a chance witness as well as interested witnesses and hence their statements should not be belived. It is true that Dharmanand and Ganesh Datt are closely related but their presence at the scene of the occurrence was quite probable and they could have been in a position to depose about the occurrence. Their cross-examination also does not show that they were not in a position to know about the facts of the occurrence and their testimony was improbable.

26. On behalf of the accused Bhim Singh, a plea of alibi was raised by learned counsel for the appellants. It has been alleged that Bhim Singh was working at Chalnichhina depot of the forest department and on the day of the occurrence, he was on duty till 5P.M. So he could not have been present at the time of occurrence. In support of this plea, the accused has examined Hira Ballabh Pandey, D.W.1 who is resin Moharrir at Chalnichhina depot. According to him, accused Bhim Singh was working at Chalnichhina depot as a labourer on daily wages. He has stated that on his report about the presence of

labourer, his wages are paid by the range office. He has proved the carbon copy of the report, Ex.Kha- 1, which was brought by him. According to this report, Bhim Singh was on duty during the period 1st June to 15th June and 23rd June to 30th June, 1985 at the Chalnichhina resin depot. This witness has stated that no attendance register of the labourers is kept at the depot. Since the original report sent by this witness namely Bhim Singh to range office was not produced, hence the trial court rightly held that in the absence of any attendance register which should have been maintained day-to-day basis, the report Ex.Kha- 1 cannot be of much value as it could have been prepared at any point of time. Hence, the trial court has rightly held that even If Bhim Singh had been at the depot on 11.6.1985, he could have left that place before 5 p.m. As such it cannot be said that Bhim Singh was present at Chalnichhina depot till 5 P.M. From the above statement of D.W. 1, the presence of Bhim Singh was not proved at Chalnichhina depot as per the law and rules and hence the plea of alibi cannot be accepted. This please is just prepared or taken to save Bhim Singh from the crime he has committed in the above said date and time.

27. It was further argued on behalf of accused persons that the prosecution could have examined a number of witnesses of the locality in support of its allegations but it has not been done. It was stated by the prosecution witnesses that on the day of the occurrence, only the shops of the complainant and the shop of Jiwanand were open while the remaining five or six shops of village Doram were closed as the shopkeepers had gone out in connection with the marriage of the son of Jai Dutt. It was not necessary

for the prosecution to examine each and every witness, who might have reached the place of occurrence. It has examined Parmanand P.W. 2 who was an independent witness and whose presence at the place of occurrence was very natural.

28. Considering the above evidence as discussed above and the facts and circumstances of the case, I am of the view that the prosecution evidence is sufficient to prove that all the five accused namely Chanar Singh, Bhawan Singh, Gopal Singh S/o Har Singh, Gopal Singh W/o Umed Singh and Bhim Singh had gone to the shop of Debit Dutt Krishanand at about 5:00 P.M. on 11.6.1985 and had pelted stones and when they were asked not to do so, they entered the shop and accused Chanar Singh caused injury to Ganesh Datt with lathi; accused Bhawan Singh caused injury to Krishanand by Lathi; Gopal Singh S/o Har Singh caused injury to Debi Datt and Gopal Singh S/o Umed Singh was wielding lathi and was saying *Maro Maro.* Accused Bhim Singh was also there with them and they formed and unlawful assembly with the common object of causing injuries to the above said injured persons. Accused Chanar Singh, Bhawan Singh and Gopal Singh S/o Har Singh were rightly awarded sentence for 6 months R.I. each under Section 323 I.P.C. and accused Gopal Singh S/o Umed Singh and Bhim Singh were rightly awarded sentence for 6 months R.I. each under Section 323 read with Section 149 I.P.C. and the charges were proved against them beyond reasonable doubt. All the accused persons were also rightly convicted for six months R.I. each for an offence punishable under Section 147 of I.P.C.

29. For the above said reasons, the appeal is devoid of merit and is hereby dismissed. The conviction and sentence awarded by the trail court is hereby confirmed. The sentence awarded by the trial court shall run concurrently.

30. Let the record be immediately sent back to the trial court concerned for compliance.

(Dharam Veer, J.)

Dated: April 25, 2007.
Rajeev Dang